

[COMMITTEE PRINT]

110TH CONGRESS
2D SESSION

H. R. _____

To amend the Federal securities laws to enhance the effectiveness of the Securities and Exchange Commission's enforcement, corporation finance, trading and markets, investment management, and examination programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. KANJORSKI introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Federal securities laws to enhance the effectiveness of the Securities and Exchange Commission's enforcement, corporation finance, trading and markets, investment management, and examination programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Securities Act of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Authority to impose civil penalties in cease and desist proceedings.
- Sec. 3. Formerly associated persons.
- Sec. 4. Scope of exemption from State securities regulation.
- Sec. 5. Collateral bars.
- Sec. 6. Covered securities.
- Sec. 7. Exempt offerings.
- Sec. 8. Unlawful margin lending.
- Sec. 9. Securities Investor Protection Act of 1970 amendments.
- Sec. 10. Annual testimony on reducing complexity in financial reporting.
- Sec. 11. Equal treatment for self-regulatory organization rules.
- Sec. 12. Lost and stolen securities.
- Sec. 13. Fingerprinting.
- Sec. 14. Clarification that section 205 of the Investment Advisers Act of 1940
does not apply to State-registered advisers.
- Sec. 15. Amendments to section 31 of the Securities Exchange Act of 1934.
- Sec. 16. Technical Corrections.
- Sec. 17. Conforming amendments for the repeal of the Public Utilities Holding
Company Act of 1935.
- Sec. 18. Protecting confidentiality of materials submitted to Commission.
- Sec. 19. Sharing privileged information with other authorities.
- Sec. 20. Nationwide service of subpoenas.

3 **SEC. 2. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE**
4 **AND DESIST PROCEEDINGS.**

5 (a) UNDER THE SECURITIES ACT OF 1933.—Section
6 8A of the Securities Act of 1933 (15 U.S.C. 77h-1) is
7 amended by adding at the end the following new sub-
8 section:

9 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

10 “(1) GROUNDS FOR IMPOSING.—In any cease-
11 and-desist proceeding under subsection (a), the
12 Commission may impose a civil penalty on a person
13 if it finds, on the record after notice and opportunity
14 for hearing, that—

15 “(A) such person—

1 “(i) is violating or has violated any
2 provision of this title, or any rule or regu-
3 lation thereunder; or

4 “(ii) is or was a cause of the violation
5 of any provision of this title, or any rule or
6 regulation thereunder; and

7 “(B) such penalty is in the public interest.

8 “(2) MAXIMUM AMOUNT OF PENALTY.—

9 “(A) FIRST TIER.—The maximum amount
10 of penalty for each act or omission described in
11 paragraph (1) shall be \$6,500 for a natural
12 person or \$65,000 for any other person.

13 “(B) SECOND TIER.—Notwithstanding
14 paragraph (A), the maximum amount of pen-
15 alty for each such act or omission shall be
16 \$65,000 for a natural person or \$325,000 for
17 any other person if the act or omission de-
18 scribed in paragraph (1) involved fraud, deceit,
19 manipulation, or deliberate or reckless dis-
20 regard of a regulatory requirement.

21 “(C) THIRD TIER.—Notwithstanding para-
22 graphs (A) and (B), the maximum amount of
23 penalty for each such act or omission shall be
24 \$130,000 for a natural person or \$650,000 for
25 any other person if—

1 “(i) the act or omission described in
2 paragraph (1) involved fraud, deceit, ma-
3 nipulation, or deliberate or reckless dis-
4 regard of a regulatory requirement; and

5 “(ii) such act or omission directly or
6 indirectly resulted in substantial losses or
7 created a significant risk of substantial
8 losses to other persons or resulted in sub-
9 stantial pecuniary gain to the person who
10 committed the act or omission.

11 “(3) EVIDENCE CONCERNING ABILITY TO
12 PAY.—In any proceeding in which the Commission
13 may impose a penalty under this section, a respond-
14 ent may present evidence of the respondent’s ability
15 to pay such penalty. The Commission may, in its
16 discretion, consider such evidence in determining
17 whether such penalty is in the public interest. Such
18 evidence may relate to the extent of such person’s
19 ability to continue in business and the collectability
20 of a penalty, taking into account any other claims of
21 the United States or third parties upon such per-
22 son’s assets and the amount of such person’s as-
23 sets.”.

1 (b) UNDER THE SECURITIES EXCHANGE ACT OF
2 1934.—Subsection (a) of section 21B of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

4 (1) by striking “(a) COMMISSION AUTHORITY
5 TO ASSESS MONEY PENALTIES.—In any pro-
6 ceeding” and inserting the following:

7 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
8 PENALTIES.—

9 “(1) IN GENERAL.—In any proceeding”;

10 (2) by redesignating paragraphs (1) through
11 (4) of such subsection as subparagraphs (A) through
12 (D), respectively and moving such redesignated sub-
13 paragraphs and the matter following such subpara-
14 graphs 2 ems to the right; and

15 (3) by adding at the end of such subsection the
16 following new paragraph:

17 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
18 any proceeding instituted pursuant to section 21C of
19 this title against any person, the Commission may
20 impose a civil penalty if it finds, on the record after
21 notice and opportunity for hearing, that such per-
22 son—

23 “(A) is violating or has violated any provi-
24 sion of this title, or any rule or regulation
25 thereunder; or

1 “(B) is or was a cause of the violation of
2 any provision of this title, or any rule or regula-
3 tion thereunder.”.

4 (c) UNDER THE INVESTMENT COMPANY ACT OF
5 1940.—Paragraph (1) of section 9(d) of the Investment
6 Company Act of 1940 (15 U.S.C. 80a-9(d)(1))) is amend-
7 ed—

8 (1) by striking “(1) AUTHORITY OF COMMIS-
9 SION.—In any proceeding” and inserting the fol-
10 lowing:

11 “(1) AUTHORITY OF COMMISSION.—

12 “(A) IN GENERAL.—In any proceeding”;

13 (2) by redesignating subparagraphs (A) through
14 (C) of such paragraph as clauses (i) through (iii),
15 respectively and by moving such redesignated clauses
16 and the matter following such subparagraphs 2 ems
17 to the right; and

18 (3) by adding at the end of such paragraph the
19 following new subparagraph:

20 “(B) CEASE-AND-DESIST PROCEEDINGS.—

21 In any proceeding instituted pursuant to sub-
22 section (f) against any person, the Commission
23 may impose a civil penalty if it finds, on the
24 record after notice and opportunity for hearing,
25 that such person—

1 “(i) is violating or has violated any
2 provision of this title, or any rule or regu-
3 lation thereunder; or

4 “(ii) is or was a cause of the violation
5 of any provision of this title, or any rule or
6 regulation thereunder.”.

7 (d) UNDER THE INVESTMENT ADVISERS ACT OF
8 1940.—Paragraph (1) of section 203(i) of the Investment
9 Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended
10 (1) by striking “(1) AUTHORITY OF COMMIS-
11 SION.—In any proceeding” and inserting the fol-
12 lowing:

13 “(1) AUTHORITY OF COMMISSION.—

14 “(A) IN GENERAL.—In any proceeding”;

15 (2) by redesignating subparagraphs (A) through
16 (D) of such paragraph as clauses (i) through (iv),
17 respectively and moving such redesignated clauses
18 and the matter following such subparagraphs 2 ems
19 to the right; and

20 (3) by adding at the end of such paragraph the
21 following new subparagraph:

22 “(B) CEASE-AND-DESIST PROCEEDINGS.—

23 In any proceeding instituted pursuant to sub-
24 section (k) against any person, the Commission
25 may impose a civil penalty if it finds, on the

1 record after notice and opportunity for hearing,
2 that such person—

3 “(i) is violating or has violated any
4 provision of this title, or any rule or regu-
5 lation thereunder; or

6 “(ii) is or was a cause of the violation
7 of any provision of this title, or any rule or
8 regulation thereunder.”.

9 **SEC. 3. FORMERLY ASSOCIATED PERSONS.**

10 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
11 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
12 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
13 4(c)(8)) is amended by striking “any member or em-
14 ployee” and inserting “any person who is, or at the time
15 of the alleged misconduct was, a member or employee”.

16 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
17 CURITIES BROKER OR DEALER.—Section 15C of the Se-
18 curities Exchange Act of 1934 (15 U.S.C. 78o–5) is
19 amended—

20 (1) in subsection (c)(1)(C), by striking “or
21 seeking to become associated,” and inserting “seek-
22 ing to become associated, or, at the time of the al-
23 leged misconduct, associated or seeking to become
24 associated”;

1 (2) in subsection (c)(2)(A), by inserting “, seek-
2 ing to become associated, or, at the time of the al-
3 leged misconduct, associated or seeking to become
4 associated” after “any person associated”; and

5 (3) in subsection (c)(2)(B), by inserting “,
6 seeking to become associated, or, at the time of the
7 alleged misconduct, associated or seeking to become
8 associated” after “any person associated”.

9 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
10 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-
11 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
12 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended
13 by inserting “, or, as to any act or practice, or omission
14 to act, while associated with a member, formerly associ-
15 ated” after “member or a person associated”.

16 (d) PARTICIPANT OF A REGISTERED CLEARING
17 AGENCY.—Section 21(a)(1) of the Securities Exchange
18 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
19 ing “or, as to any act or practice, or omission to act, while
20 a participant, was a participant,” after “in which such
21 person is a participant,”.

22 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY
23 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

1 (1) by striking “any officer or director” and in-
2 serting “any person who is, or at the time of the al-
3 leged misconduct was, an officer or director”; and

4 (2) by striking “such officer or director” and
5 inserting “such person”.

6 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
7 PANY.—Section 36(a) of the Investment Company Act of
8 1940 (15 U.S.C. 80a–35(a)) is amended—

9 (1) by striking “a person serving or acting” and
10 inserting “a person who is, or at the time of the al-
11 leged misconduct was, serving or acting”; and

12 (2) by striking “such person so serves or acts”
13 and inserting “such person so serves or acts, or at
14 the time of the alleged misconduct, so served or
15 acted”.

16 **SEC. 4. SCOPE OF EXEMPTION FROM STATE SECURITIES**
17 **REGULATION.**

18 Section 18(b)(1) of the Securities Act of 1933 (15
19 U.S.C. 77r(b)(1)) is amended—

20 (1) in subparagraph (A)—

21 (A) by striking “or the American Stock
22 Exchange, or listed, or authorized for listing, on
23 the National Market System of the Nasdaq
24 Stock Market (or any successor to such enti-
25 ties)” and inserting “, the American Stock Ex-

1 change, or the Nasdaq Stock Market (or any
2 successor to such entities)”; and

3 (B) by inserting before the semicolon the
4 following: “, except that a security listed, or au-
5 thorized for listing, on the New York Stock Ex-
6 change, the American Stock Exchange, or the
7 Nasdaq Stock Market (or any successor to such
8 entities) shall not be a covered security if the
9 exchange adopts listing standards pursuant to
10 section 19(b) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78s(b)) that designates a tier
12 or segment of such securities as securities that
13 are not covered securities for purposes of this
14 section and such security is listed, or authorized
15 for listing, on such tier or segment”; and
16 (2) in subparagraph (B), by inserting “covered”
17 after “applicable to”.

18 **SEC. 5. COLLATERAL BARS.**

19 (a) SECTION 15(B)(6)(A) OF THE SECURITIES EX-
20 CHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Secu-
21 rities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is
22 amended by striking “12 months, or bar such person from
23 being associated with a broker or dealer,” and inserting
24 “12 months, or bar any such person from being associated

1 with a broker, dealer, investment adviser, municipal secu-
2 rities dealer, or transfer agent,”.

3 (b) SECTION 15B(C)(4) OF THE SECURITIES EX-
4 CHANGE ACT OF 1934.—Section 15B(c)(4) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is
6 amended by striking “twelve months or bar any such per-
7 son from being associated with a municipal securities deal-
8 er,” and inserting “twelve months or bar any such person
9 from being associated with a broker, dealer, investment
10 adviser, municipal securities dealer, or transfer agent,”.

11 (c) SECTION 17A(C)(4)(C) OF THE SECURITIES EX-
12 CHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Se-
13 curities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C))
14 is amended by striking “twelve months or bar any such
15 person from being associated with the transfer agent,”
16 and inserting “twelve months or bar any such person from
17 being associated with any transfer agent, broker, dealer,
18 investment adviser, or municipal securities dealer,”.

19 (d) SECTION 203(F) OF THE INVESTMENT ADVISERS
20 ACT OF 1940.—Section 203(f) of the Investment Advisers
21 Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking
22 “twelve months or bar any such person from being associ-
23 ated with an investment adviser,” and inserting “twelve
24 months or bar any such person from being associated with

1 an investment adviser, broker, dealer, municipal securities
2 dealer, or transfer agent,”.

3 **SEC. 6. COVERED SECURITIES.**

4 Section 18(b)(1) of the Securities Act of 1933 (15
5 U.S.C. 77r(b)(1)) is amended—

6 (1) in subparagraph (B), by striking “or” at
7 the end;

8 (2) in subparagraph (C), by striking the period
9 at the end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(D) a warrant or right to subscribe to or
12 purchase any of the foregoing.”.

13 **SEC. 7. EXEMPT OFFERINGS.**

14 Section 18(b)(4)(D) of the Securities Act of 1933 (15
15 U.S.C. 77r(b)(4)(D)) is amended to read as follows:

16 “(D) Commission rules or regulations
17 issued under section 4(2), except that this sub-
18 paragraph does not prohibit a State from im-
19 posing notice filing requirements that are sub-
20 stantially similar to those required by rule or
21 regulation under section 4(2) that are in effect
22 on September 1, 1996, including information
23 corresponding to that in all the parts and the
24 appendix to Form D.”.

1 **SEC. 8. UNLAWFUL MARGIN LENDING.**

2 Section 7(c)(1)(A) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
4 and” and inserting “; or”.

5 **SEC. 9. SECURITIES INVESTOR PROTECTION ACT OF 1970**
6 **AMENDMENTS.**

7 (a) SIPC ADVANCES.—Section 9(a)(1) of the Securi-
8 ties Investor Protection Act of 1970 (15 U.S.C. 78fff-
9 3(a)(1)) is amended by inserting “or options on com-
10 modity futures contracts” after “claim for securities”.

11 (b) DEFINITIONS.—Section 16 of such Act (15
12 U.S.C. 78lll) is amended—

13 (1) by amending paragraph (2) to read as fol-
14 lows:

15 “(2) CUSTOMER.—

16 “(A) IN GENERAL.—The term ‘customer’
17 of a debtor means any person (including any
18 person with whom the debtor deals as principal
19 or agent) who has a claim on account of securi-
20 ties received, acquired, or held by the debtor in
21 the ordinary course of its business as a broker
22 or dealer from or for the securities accounts of
23 such person for safekeeping, with a view to sale,
24 to cover consummated sales, pursuant to pur-
25 chases, as collateral, security, or for purposes of
26 effecting transfer.

1 “(B) INCLUDED PERSONS.—The term
2 ‘customer’ includes—

3 “(i) any person who has deposited
4 cash with the debtor for the purpose of
5 purchasing securities;

6 “(ii) any person who has a claim
7 against the debtor for cash, securities, fu-
8 tures contracts, or options on futures con-
9 tracts received, acquired, or held in a port-
10 folio margining account carried as a secu-
11 rities account pursuant to a portfolio mar-
12 gining program approved by the Commis-
13 sion; and

14 “(iii) any person who has a claim
15 against the debtor arising out of sales or
16 conversions of such securities.

17 “(C) EXCLUDED PERSONS.—The term
18 ‘customer’ does not include—

19 “(i) any person to the extent that the
20 claim of such person arises out of trans-
21 actions with a foreign subsidiary of a mem-
22 ber of SIPC; or

23 “(ii) any person to the extent that
24 such person has a claim for cash or securi-
25 ties which by contract, agreement, or un-

1 derstanding, or by operation of law, is part
2 of the capital of the debtor, or is subordi-
3 nated to the claims of any or all creditors
4 of the debtor, notwithstanding that some
5 ground exists for declaring such contract,
6 agreement, or understanding void or void-
7 able in a suit between the claimant and the
8 debtor.”;

9 (2) in paragraph (4), by inserting after the first
10 sentence the following new sentence: “In the case of
11 portfolio margining accounts of customers that are
12 carried as securities accounts pursuant to a portfolio
13 margining program approved by the Commission,
14 such term shall also include futures contracts and
15 options on futures contracts received, acquired, or
16 held by or for the account of a debtor from or for
17 such accounts, and the proceeds thereof.”;

18 (3) in paragraph (9), by inserting before “Such
19 term” in the matter following subparagraph (L) the
20 following: “The term includes revenues earned by a
21 broker or dealer in connection with transactions in
22 customers’ portfolio margining accounts carried as
23 securities accounts pursuant to a portfolio margining
24 program approved by the Commission.”; and

25 (4) in paragraph (11)—

1 (A) by amending subparagraph (A) to read
2 as follows:

3 “(A) calculating the sum which would have
4 been owed by the debtor to such customer if the
5 debtor had liquidated, by sale or purchase on
6 the filing date—

7 “(i) all securities positions of such
8 customer (other than customer name secu-
9 rities reclaimed by such customer); and

10 “(ii) all positions in futures contracts
11 and options on futures contracts held in a
12 portfolio margining account carried as a
13 securities account pursuant to a portfolio
14 margining program approved by the Com-
15 mission; minus”; and

16 (B) by inserting before “In determining”
17 in the matter following subparagraph (C) the
18 following: “A claim for a commodity futures
19 contract received, acquired, or held in a port-
20 folio margining account pursuant to a portfolio
21 margining program approved by the Commis-
22 sion, or a claim for a security futures contract,
23 shall be deemed to be a claim for the mark-to-
24 market (variation) payments due with respect

1 to such contract as of the filing date, and such
2 claim shall be treated as a claim for cash.”.

3 **SEC. 10. ANNUAL TESTIMONY ON REDUCING COMPLEXITY**
4 **IN FINANCIAL REPORTING.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Transparent and clear financial reporting is
7 integral to the continued growth and strength of our
8 capital markets and the confidence of investors.

9 (2) The increasing detail and volume of ac-
10 counting, auditing, and reporting guidance pose a
11 major challenge.

12 (3) The complexity of accounting and auditing
13 standards in the United States has added to the
14 costs and effort involved in financial reporting.

15 (b) TESTIMONY REQUIRED ON REDUCING COM-
16 PLEXITY IN FINANCIAL REPORTING.—The Securities and
17 Exchange Commission, the Financial Accounting Stand-
18 ards Board, and the Public Company Accounting Over-
19 sight Board shall annually provide oral testimony by their
20 respective Chairpersons or a designee of the Chairperson,
21 beginning in 2009, and for 5 years thereafter, to the Com-
22 mittee on Financial Services of the House of Representa-
23 tives on their efforts to reduce the complexity in financial
24 reporting to provide more accurate and clear financial in-
25 formation to investors, including—

1 (1) reassessing complex and outdated account-
2 ing standards;

3 (2) improving the understandability, consist-
4 ency, and overall usability of the existing accounting
5 and auditing literature;

6 (3) developing principles-based accounting
7 standards;

8 (4) encouraging the use and acceptance of
9 interactive data; and

10 (5) promoting disclosures in “plain English”.

11 **SEC. 11. EQUAL TREATMENT FOR SELF-REGULATORY OR-**
12 **GANIZATION RULES.**

13 Section 29(a) of the Securities Exchange Act of 1934
14 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
15 required thereby” and inserting “a self-regulatory organi-
16 zation”.

17 **SEC. 12. LOST AND STOLEN SECURITIES.**

18 Section 17(f)(1) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78q(f)(1)) is amended—

20 (1) in subparagraph (A), by striking “missing,
21 lost, counterfeit, or stolen securities” and inserting
22 “securities that are missing, lost, counterfeit, stolen,
23 cancelled, or any other category of securities as the
24 Commission, by rule, may prescribe”; and

1 (2) in subparagraph (B), by striking “or sto-
2 len” and inserting “stolen, cancelled, or reported in
3 such other manner as the Commission, by rule, may
4 prescribe”.

5 **SEC. 13. FINGERPRINTING.**

6 Section 17(f)(2) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78q(f)(2)) is amended—

8 (1) by striking “and registered clearing agency”
9 and inserting “registered clearing agency, registered
10 securities information processor, national securities
11 exchange and national securities association”; and

12 (2) by striking “or clearing agency” and insert-
13 ing “clearing agency, securities information proc-
14 essor, national securities exchange or national secu-
15 rities association”.

16 **SEC. 14. CLARIFICATION THAT SECTION 205 OF THE IN-**
17 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
18 **APPLY TO STATE-REGISTERED ADVISERS.**

19 Section 205(a) of the Investment Advisers Act of
20 1940 (15 U.S.C. 80b-5(a)) is amended—

21 (1) by striking “, unless exempt from registra-
22 tion pursuant to section 203(b),” and inserting
23 “registered or required to be registered with the
24 Commission”;

1 (2) by striking “make use of the mails or any
2 means or instrumentality of interstate commerce, di-
3 rectly or indirectly, to”; and

4 (3) by striking “to” after “in any way”.

5 **SEC. 15. AMENDMENTS TO SECTION 31 OF THE SECURITIES**

6 **EXCHANGE ACT OF 1934.**

7 Section 31 of the Securities Exchange Act of 1934
8 (15 U.S.C. 78ee) is amended—

9 (1) in subsection (e)(2), by striking “September
10 30” and inserting “September 25”; and

11 (2) in subsection (g), by striking “April 30”
12 and inserting “August 31”.

13 **SEC. 16. TECHNICAL CORRECTIONS.**

14 (a) SECURITIES ACT OF 1933.—The Securities Act
15 of 1933 (15 U.S.C. 77a et seq.) is amended—

16 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
17 striking “individual;” and inserting “individual;”;

18 (2) in section 18(b)(1)(C) (15 U.S.C.
19 77r(b)(1)(C)), by striking “is a security” and insert-
20 ing “a security”;

21 (3) in section 18(c)(2)(B)(i) (15 U.S.C.
22 77r(c)(2)(B)(i)), by striking “State, or” and insert-
23 ing “State or”;

1 (4) in section 19(d)(6)(A) (15 U.S.C.
2 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
3 and inserting “in paragraph (1) or (3)”; and

4 (5) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
5 2(c)(1)(B)(ii)), by striking “business entity;” and in-
6 serting “business entity.”

7 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
8 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
9 amended—

10 (1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by
11 striking “affected” and inserting “effected”;

12 (2) in section 3(a)(55)(A) (15 U.S.C.
13 78c(a)(55)(A)), by striking “section 3(a)(12) of the
14 Securities Exchange Act of 1934” and inserting
15 “section 3(a)(12) of this Act”;

16 (3) in section 3(g) (15 U.S.C. 78c(g)), by strik-
17 ing “company, account person, or entity” and insert-
18 ing “company, account, person, or entity”;

19 (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j–
20 1(i)(1)(B)(i)), by striking “nonaudit” and inserting
21 “non-audit”;

22 (5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
23 by striking “earning statement” and inserting
24 “earnings statement”;

25 (6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

1 (A) by striking the sentence beginning
2 “The order granting” and ending “from such
3 membership.” in subparagraph (B); and

4 (B) inserting such sentence in the matter
5 following such subparagraph after “are satis-
6 fied.”;

7 (7) in section 15 (15 U.S.C. 78o), redesignate
8 subsection (i), as added by section 303(f) of the
9 Commodity Futures Modernization Act of 2000 (114
10 Stat. 2763A–455), as subsection (j);

11 (8) in section 15C(a)(2) (15 U.S.C. 78o–
12 5(a)(2))—

13 (A) by redesignating clauses (i) and (ii) as
14 subparagraphs (A) and (B), respectively;

15 (B) by striking the sentence beginning
16 “The order granting” and ending “from such
17 membership.” in such redesignated subpara-
18 graph (B); and

19 (C) inserting such sentence in the matter
20 following such redesignated subparagraph after
21 “are satisfied.”;

22 (9) in section 16(a)(2)(C) (15 U.S.C.
23 78p(a)(2)(C)), by striking “section 206(b)” and in-
24 serting “section 206B”;

1 (10) in section 17(b)(1)(B) (15 U.S.C.
2 78q(b)(1)(B)), by striking “15A(k) gives” and in-
3 serting “15A(k), give”; and

4 (11) in section 21C(c)(2) (15 U.S.C. 78u-
5 3(c)(2)), by striking “paragraph (1) subsection” and
6 inserting “Paragraph (1)”.

7 (c) TRUST INDENTURE ACT OF 1939.—The Trust
8 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
9 amended—

10 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
11 striking “section 2 of such Act” and inserting “sec-
12 tion 2(a) of such Act”;

13 (2) in section 313(a)(4) (15 U.S.C.
14 77mmm(a)(4)) by striking “subsection 311” and in-
15 serting “section 311(b)”; and

16 (3) in section 317(a)(1) (15 U.S.C.
17 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

18 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
19 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
20 is amended—

21 (1) in section 2(a)(19) (15 U.S.C. 80a–
22 2(a)(19)) by striking “clause (vi)” both places it ap-
23 pears in the last two sentences and inserting “clause
24 (vii)”;

1 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
2 9(b)(4)(B)), by inserting “or” after the semicolon at
3 the end;

4 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
5 12(d)(1)(J)), by striking “any provision of this sub-
6 section” and inserting “any provision of this para-
7 graph”;

8 (4) in section 13(a)(3) (15 U.S.C. 80a–
9 13(a)(3)), by inserting “or” after the semicolon at
10 the end;

11 (5) in section 17(f)(4) (15 U.S.C. 80a–
12 17(f)(4)), by striking “No such member” and insert-
13 ing “No member of a national securities exchange”;

14 (6) in section 17(f)(6) (15 U.S.C. 80a–
15 17(f)(6)), by striking “company may serve” and in-
16 serting “company, may serve”; and

17 (7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
18 60(a)(3)(B)(iii))—

19 (A) by striking “paragraph (1) of section
20 205” and inserting “section 205(a)(1)”; and

21 (B) by striking “clause (A) or (B) of that
22 section” and inserting “section 205(b)(1) or
23 (2)”.

1 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
2 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
3 is amended—

4 (1) in each of the following sections, by striking
5 “principal business office” or “principal place of
6 business” (whichever and wherever it appears) and
7 inserting “principal office and place of business”:
8 sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b),
9 and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–
10 3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–
11 18a(c)); and

12 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
13 inserting “or” after the semicolon at the end.

14 **SEC. 17. CONFORMING AMENDMENTS FOR THE REPEAL OF**
15 **THE PUBLIC UTILITIES HOLDING COMPANY**
16 **ACT OF 1935.**

17 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
18 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
19 amended—

20 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
21 by striking “the Public Utility Holding Company
22 Act of 1935 (15 U.S.C. 79a et seq.),”; and

23 (2) in section 12(k) (15 U.S.C. 78l(k)), by
24 amending paragraph (7) to read as follows:

1 “(7) DEFINITION.—For purposes of this sub-
2 section, the term ‘emergency’ means—

3 “(A) a major market disturbance charac-
4 terized by or constituting—

5 “(i) sudden and excessive fluctuations
6 of securities prices generally, or a substan-
7 tial threat thereof, that threaten fair and
8 orderly markets; or

9 “(ii) a substantial disruption of the
10 safe or efficient operation of the national
11 system for clearance and settlement of
12 transactions in securities, or a substantial
13 threat thereof; or

14 “(B) a major disturbance that substan-
15 tially disrupts, or threatens to substantially dis-
16 rupt—

17 “(i) the functioning of securities mar-
18 kets, investment companies, or any other
19 significant portion or segment of the secu-
20 rities markets; or

21 “(ii) the transmission or processing of
22 securities transactions.”.

23 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
24 by striking “section 18(c) of the Public Utility Hold-
25 ing Company Act of 1935,”.

1 (b) TRUST INDENTURE ACT OF 1939.—The Trust
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
3 amended—

4 (1) in section 303 (15 U.S.C. 77ccc), by
5 amending paragraph (17) to read as follows:

6 “(17) The terms ‘Securities Act of 1933’ and
7 ‘Securities Exchange Act of 1934’ shall be deemed
8 to refer, respectively, to such Acts, as amended,
9 whether amended prior to or after the enactment of
10 this title.”;

11 (2) in section 308 (15 U.S.C. 77hhh), by strik-
12 ing “Securities Act of 1933, the Securities Exchange
13 Act of 1934, or the Public Utility Holding Company
14 Act of 1935” each place it appears and inserting
15 “Securities Act of 1933 or the Securities Exchange
16 Act of 1934”;

17 (3) in section 310 (15 U.S.C. 77jjj), by striking
18 subsection (c) (including the preceding heading);

19 (4) in section 311 (15 U.S.C. 77kkk) by strik-
20 ing subsection (c);

21 (5) in section 323(b) (15 U.S.C. 77www(b)), by
22 striking “Securities Act of 1933, or the Securities
23 Exchange Act of 1934, or the Public Utility Holding
24 Company Act of 1935” and inserting “Securities Act

1 of 1933 or the Securities Exchange Act of 1934”;
2 and

3 (6) in section 326 (15 U.S.C. 77zzz), by strik-
4 ing “Securities Act of 1933, or the Securities Ex-
5 change Act of 1934, or the Public Utility Holding
6 Company Act of 1935,” and inserting “Securities
7 Act of 1933 or the Securities Exchange Act of
8 1934”.

9 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
10 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
11 is amended—

12 (1) in section 2(a)(44) (15 U.S.C. 80a–
13 2(a)(44)), by striking “‘Public Utility Holding Com-
14 pany Act of 1935’,”;

15 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
16 amending paragraph (8) to read as follows:

17 “(8) [Repealed]”;

18 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
19 striking “the Public Utility Holding Company Act of
20 1935,”; and

21 (4) in section 50 (15 U.S.C. 80a–49), by strik-
22 ing “the Public Utility Holding Company Act of
23 1935,”.

24 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
25 202(a)(21) of the Investment Advisers Act of 1940 (15

1 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
2 Utility Holding Company Act of 1935’”.

3 **SEC. 18. PROTECTING CONFIDENTIALITY OF MATERIALS**
4 **SUBMITTED TO COMMISSION.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
6 17(j) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78q(j)) is amended to read as follows:

8 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
9 MATION.—Notwithstanding any other provision of law, the
10 Commission shall not be compelled to disclose any infor-
11 mation, documents, records, or reports that relate to an
12 examination of a person subject to or described in this
13 section, including subsection (i)(5)(A), or the financial or
14 operational condition of such persons, or any information
15 supplied to the Commission by any domestic or foreign
16 regulatory agency that relates to the financial or oper-
17 ational condition of such persons, of any associated person
18 of such persons, or any affiliate of an investment bank
19 holding company. Nothing in this subsection shall author-
20 ize the Commission to withhold information from Con-
21 gress, or prevent the Commission from complying with a
22 request for information from any other Federal depart-
23 ment or agency or any self-regulatory organization re-
24 questing the information for purposes within the scope of
25 its jurisdiction. Nothing in this subsection shall prevent

1 the Commission from complying with an order of a court
2 of the United States in an action brought by the United
3 States or the Commission against such a person to
4 produce information, documents, records, or reports relat-
5 ing directly to the examination of that person or the finan-
6 cial or operational condition of that person or an associ-
7 ated or affiliated person of that person. For purposes of
8 section 552 of title 5, United States Code, this subsection
9 shall be considered a statute described in subsection
10 (b)(3)(B) of such section 552. In prescribing regulations
11 to carry out the requirements of this subsection, the Com-
12 mission shall designate information described in or ob-
13 tained pursuant to subparagraphs (A), (B), and (C) of
14 subsection (i)(3) as confidential information for purposes
15 of section 24(b)(2) of this title.”.

16 (b) INVESTMENT COMPANY ACT OF 1940.—Section
17 31(b) of the Investment Company Act of 1940 (15 U.S.C.
18 80a-30(b)) is amended by adding at the end the following:

19 “(4) CONFIDENTIALITY.—Notwithstanding any
20 other provision of law, the Commission shall not be
21 compelled to disclose any information, documents,
22 records, or reports that relate to an examination of
23 a person subject to or described in this section.
24 Nothing in this subsection shall authorize the Com-
25 mission to withhold information from Congress, or

1 prevent the Commission from complying with a re-
2 quest for information from any other Federal de-
3 partment or agency requesting the information for
4 purposes within the scope of its jurisdiction. Nothing
5 in this subsection shall prevent the Commission from
6 complying with an order of a court of the United
7 States in an action brought by the United States or
8 the Commission against such a person to produce in-
9 formation, documents, records, or reports relating
10 directly to the examination of that person or the fi-
11 nancial or operational condition of that person or an
12 associated or affiliated person of that person. For
13 purposes of section 552 of title 5, United States
14 Code, this subsection shall be considered a statute
15 described in subsection (b)(3)(B) of such section
16 552.”.

17 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
18 204 of the Investment Advisers Act of 1940 (15 U.S.C.
19 80b-4) is amended—

20 (1) by striking “Every investment adviser” and
21 inserting “(a) Every investment adviser”; and

22 (2) by adding at the end the following:

23 “(b) Notwithstanding any other provision of law, the
24 Commission shall not be compelled to disclose any infor-
25 mation, documents, records, or reports that relate to an

1 examination of a person subject to or described in this
2 section. Nothing in this subsection shall authorize the
3 Commission to withhold information from Congress, or
4 prevent the Commission from complying with a request
5 for information from any other Federal department or
6 agency requesting the information for purposes within the
7 scope of its jurisdiction. Nothing in this subsection shall
8 prevent the Commission from complying with an order of
9 a court of the United States in an action brought by the
10 United States or the Commission against such a person
11 to produce information, documents, records, or reports re-
12 lating directly to the examination of that person or the
13 financial or operational condition of that person or an as-
14 sociated or affiliated person of that person. For purposes
15 of section 552 of title 5, United States Code, this sub-
16 section shall be considered a statute described in sub-
17 section (b)(3)(B) of such section 552.”.

18 **SEC. 19. SHARING PRIVILEGED INFORMATION WITH OTHER**

19 **AUTHORITIES.**

20 Section 24 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78x) is amended by—

22 (1) redesignating subsections (d) and (e) as
23 subsections (e) and (f), respectively;

1 (2) in subsection (e), as redesignated, striking
2 “as provided in subsection (e)” and inserting “as
3 provided in subsection (f)”;

4 (3) inserting after subsection (c) the following
5 new subsection (d)—

6 “(d) SHARING PRIVILEGED INFORMATION WITH
7 OTHER AUTHORITIES.—

8 “(1) PRIVILEGED INFORMATION PROVIDED BY
9 THE COMMISSION.—The Commission shall not be
10 deemed to have waived any privilege applicable to
11 any information by transferring that information to
12 or permitting that information to be used by—

13 “(A) any agency (as defined in section 6 of
14 title 18, United States Code);

15 “(B) any foreign securities authority;

16 “(C) any foreign law enforcement author-
17 ity; or

18 “(D) any state securities or law enforce-
19 ment authority.

20 “(2) NON-DISCLOSURE OF PRIVILEGED INFOR-
21 MATION PROVIDED TO THE COMMISSION.—Except as
22 provided in subsection (f), the Commission shall not
23 be compelled to disclose privileged information ob-
24 tained from any foreign securities authority, or for-
25 eign law enforcement authority, if the authority has

1 in good faith determined and represented to the
2 Commission that the information is privileged.

3 “(3) NON-WAIVER OF PRIVILEGED INFORMA-
4 TION PROVIDED TO THE COMMISSION.—No Federal
5 agency or state securities or law enforcement au-
6 thority shall be deemed to have waived any privilege
7 applicable to any information by transferring that
8 information to or permitting that information to be
9 used by the Commission.

10 “(4) DEFINITIONS.—For purposes of this sub-
11 section:

12 “(A) The term ‘privilege’ includes any
13 work-product privilege, attorney-client privilege,
14 governmental privilege, or other privilege recog-
15 nized under Federal, Foreign, or State law.

16 “(B) The term ‘foreign law enforcement
17 authority’ means any foreign authority that is
18 empowered under foreign law to detect, inves-
19 tigate or prosecute potential violations of law.

20 “(C) The term ‘state securities or law en-
21 forcement authority’ means the authority of any
22 state or territory that is empowered under state
23 or territory law to detect, investigate or pros-
24 ecute potential violations of law.”.

1 **SEC. 20. NATIONWIDE SERVICE OF SUBPOENAS.**

2 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
3 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
4 inserting after the second sentence the following: “In any
5 action or proceeding instituted by the Commission under
6 this title in a United States district court for any judicial
7 district, subpoenas issued by or on behalf of such court
8 to compel the attendance of witnesses or the production
9 of documents or tangible things (or both) may be served
10 in any other district. Such subpoenas may be served and
11 enforced without application to the court or a showing of
12 cause, notwithstanding the provisions of rule 45(b)(2),
13 (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of
14 Civil Procedure.”.

15 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
16 27 of the Securities Exchange Act of 1934 (15 U.S.C.
17 78aa) is amended by inserting after the third sentence the
18 following: “In any action or proceeding instituted by the
19 Commission under this title in a United States district
20 court for any judicial district, subpoenas issued by or on
21 behalf of such court to compel the attendance of witnesses
22 or the production of documents or tangible things (or
23 both) may be served in any other district. Such subpoenas
24 may be served and enforced without application to the
25 court or a showing of cause, notwithstanding the provi-

1 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
2 the Federal Rules of Civil Procedure.”.

3 (c) INVESTMENT COMPANY ACT OF 1940.—Section
4 44 of the Investment Company Act of 1940 (15 U.S.C.
5 80a-43) is amended by inserting after the fourth sentence
6 the following: “In any action or proceeding instituted by
7 the Commission under this title in a United States district
8 court for any judicial district, subpoenas issued by or on
9 behalf of such court to compel the attendance of witnesses
10 or the production of documents or tangible things (or
11 both) may be served in any other district. Such subpoenas
12 may be served and enforced without application to the
13 court or a showing of cause, notwithstanding the provi-
14 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
15 the Federal Rules of Civil Procedure.”.

16 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
17 214 of the Investment Advisers Act of 1940 (15 U.S.C.
18 80b-14) is amended by inserting after the third sentence
19 the following: “In any action or proceeding instituted by
20 the Commission under this title in a United States district
21 court for any judicial district, subpoenas issued by or on
22 behalf of such court to compel the attendance of witnesses
23 or the production of documents or tangible things (or
24 both) may be served in any other district. Such subpoenas
25 may be served and enforced without application to the

1 court or a showing of cause, notwithstanding the provi-
2 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
3 the Federal Rules of Civil Procedure.”.